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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/776,070

02/11/2004

George P. Stolzenfeld

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7590

06/05/2007

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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/776,070

**Applicant(s)**

STOLZENFELD, GEORGE P.

**Examiner**

Niki M. Eloshway

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 7, 10-14, 18, 21, 23, 24, 29, 30 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobi (U.S. 4,949,878). Jacobi teaches a bung at 91 having a first wall 34 with a fastening feature 36, a second wall at 97 and a fusible link shown adjacent lead line 99 in figure 3. See col. 5 lines 3-6 regarding the polymeric material of claim 2.
3. Claims 1, 9, 12, 19 and 23-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Luburic (U.S. 6,604,647). Luburic teaches a bung shown in figure 12 having a first wall with a fastening feature, a second wall and a fusible link at 40.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3781

5. Claims 3, 15 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi (U.S. 4,949,878) in view of Bouc et al. (U.S. 6,571,972). Jacobi discloses the claimed invention except for the polymeric material being HDPE. Bouc et al. teaches that it is known to form a bung of HDPE (see col. 3 lines 48-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi made of HDPE, as taught by Bouc et al., since HDPE is a well known and widely used material in the container art which offers sufficient strength with a reduced weight.

6. Claims 4-6, 16, 17, 27-29, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi (U.S. 4,949,878). Regarding claims 4, 16, 27, 29 and 31, Jacobi discloses the claimed invention except for the thickness of the thin walled sections being less than or equal to 0.04 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi with the thin walled section having a thickness of less than or equal to 0.04 inches, since it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Regarding claims 5, 17, 28 and 32, Jacobi discloses the claimed invention except for the width of the fusible link being less than or equal to 0.312 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi with the width of the fusible link being less than or equal to 0.312 inches, since it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

7. Claims 8, 22, 35, 36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi (U.S. 4,949,878) in view of Stolzenfeld (U.S. 5,573,135). Regarding claims 1, 35, 36 and 38, Jacobi discloses the claimed invention except for the safety vents extending through the threads. Stolzenfeld

Art Unit: 3781

teaches that it is known to form a bung with safety vents extending through the threads. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi with safety vents extending through the threads, as taught by Stolzenfeld, in order to allow venting of pressure buildup in the container prior to complete removal of the closure.

Regarding claim 22, Jacobi discloses the claimed invention except for the notches. Stolzenfeld teaches that it is known to form a bung with notches for a tool to engage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi with tool notches, as taught by Stolzenfeld, in order to allow firm grip of the bung for removal by a conventional tool.

8. Claims 19, 20, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi (U.S. 4,949,878) in view of Wildfeuer (U.S. 5,074,428). Jacobi discloses the claimed invention except for the sealing ring and annular rib. Wildfeuer teaches that it is known to provide a closure with a sealing ring and annular rib adjacent the first wall (see elements 9 and 8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi with the sealing ring and annular rib of Wildfeuer, in order to better seal the container and prevent leaks.

9. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi (U.S. 4,949,878) in view of Stolzenfeld (U.S. 5,573,135), as applied to claim 36 above, and further in view of Bouc et al. (U.S. 6,571,972). The modified bung of Jacobi discloses the claimed invention except for the polymeric material being HDPE. Bouc et al. teaches that it is known to form a bung of HDPE (see col. 3 lines 48-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bung of Jacobi made of HDPE, as taught by Bouc et al., since HDPE is a well known and widely used material in the container art which offers sufficient strength with a reduced weight.

Art Unit: 3781

10. Claims 39 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi (U.S. 4,949,878) in view of Stolzenfeld (U.S. 5,573,135) and Wildfeuer (U.S. 5,074,428). Jacobi discloses the claimed invention except for the safety vents extending through the threads and the sealing ring. Stolzenfeld teaches that it is known to form a bung with safety vents extending through the threads. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Jacobi with safety vents extending through the threads, as taught by Stolzenfeld, in order to allow venting of pressure buildup in the container prior to complete removal of the closure.

Wildfeuer teaches that it is known to provide a closure with a sealing ring and annular rib adjacent the first wall (see elements 9 and 8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bung of Jacobi with the sealing ring and annular rib of Wildfeuer, in order to better seal the container and prevent leaks.

11. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobi (U.S. 4,949,878) in view of Stolzenfeld (U.S. 5,573,135) and Wildfeuer (U.S. 5,074,428), as applied to claim 39 above, and further in view of Bouc et al. (U.S. 6,571,972). The modified invention of Jacobi discloses the claimed invention except for the polymeric material being HDPE. Bouc et al. teaches that it is known to form a bung of HDPE (see col. 3 lines 48-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bung of Jacobi made of HDPE, as taught by Bouc et al., since HDPE is a well known and widely used material in the container art which offers sufficient strength with a reduced weight.

12. Claims 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stolzenfeld (U.S. 5,573,135) in view of Bouc et al. (U.S. 6,571,972). Stolzenfeld discloses the claimed invention except for the polymeric material. Bouc et al. teaches that it is known to form a bung of HDPE (see col. 3 lines 48-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bung of Stolzenfeld made of HDPE, as taught by Bouc et al., since HDPE is a

Art Unit: 3781

well known and widely used material in the container art which offers sufficient strength with a reduced weight.

### ***Response to Arguments***

Applicant's arguments filed February 12, 2007 have been fully considered but they are not persuasive. Applicant argues that Jacobi does not teach a fusible link. The express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102 or 103. There is no requirement that a person of ordinary skill in the art would have recognized the inherent disclosure at the time of invention, but only that the subject matter is in fact inherent in the prior art reference. *Schering Corp. v. Geneva Pharm. Inc.*, 339 F.3d 1373, 1377, 67 USPQ2d 1664, 1668 (Fed. Cir. 2003). The fusible link, as set forth in the present application, is an area of closure which softens and/or melts to the point of rupture at elevated temperatures. It is the examiner's position that the Jacobi closure is capable of performing such a function under the appropriate circumstances. As seen in figure 3 of Jacobi, the closure has an area of decreased thickness between the inner and outer walls. Clearly, this area would rupture before the inner wall due to the fact that the inner wall is made of the same material yet has a far greater thickness. Regarding the outer wall, it appears that the thickness of the outer wall is similar to that of the link wall. The outer wall, however, is supported by the container neck which provides an additional layer of material increasing the insulating effects and strength of the outer wall. In addition, an increase of pressure within the container applies an upwardly directed force on the closure. The upward force would be directed in the thickness direction of the link but in the length direction of the outer wall. Since the thickness of the link wall is far less than the length of the outer wall, the upward force would aid in rupturing the link wall before rupturing the outer wall.

13. It has been held that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure

Art Unit: 3781

rather than function, because apparatus claims cover what a device is, not what a device does (*Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990)).

Thus, if a prior art structure is capable of performing the intended use as recited in the preamble, or elsewhere in a claim, then it meets the claim. Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977).

14. Regarding the argument that the container of Jacobi might melt prior to the link wall, the container is not an element of the claimed invention. It is noted that the features upon which applicant relies (i.e., that the link ruptures before the container wall) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims are drawn only to the fusible bung with a link wall which would rupture before the inner and outer walls. Such a closure, like that of Jacobi could be applied to other containers having variable wall thicknesses.

15. Applicant also argues that the Luburic device could rupture in the area of the gasket instead of the reduced thickness link wall. This is incorrect. The link wall has two areas of reduced thickness which are less than the thickness of the wall adjacent the gasket. In addition, the gasket would provide a degree of insulation for the wall adjacent thereto. The link wall of Luburic, however, has no additional material to provide protect it from increased temperature and pressure. The reduced thickness areas of the link wall of Luburic are designed for rupture.

16. In response to applicant's argument that other features of Stolzenfeld have been ignored in the claim rejections over Jacobi in view of Stolzenfeld, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that



Art Unit: 3781

the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

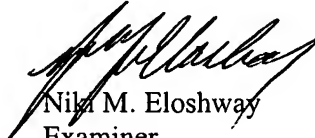
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloschway whose telephone number is 571-272-4538. The examiner can normally be reached on Thursdays and Fridays 8 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

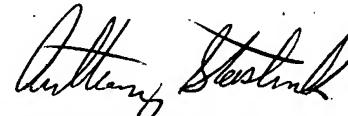
Art Unit: 3781

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Nilu M. Eloshway  
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